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Larry Jones

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LARRY JONES,  
  
**PLAINTIFF,**

**VS.**

LOS ANGELES COUNTY, LOS ANGELES COUNTY

SHERIFF'S DEPARTMENT ET AL.

**DEFENDANT(S)**

)  
) Case No.: 2:24-cv-01388-SVW-ADS  
) Assigned to the Hon. Stephen Wilson.  
)  
) **PLAINTIFFS' EX PARTE APPLICATION FOR**  
) **LEAVE, *NUNC PRO TUNC*, TO FILE**  
) **DOCUMENTS OUT OF TIME.**  
)  
)  
) Trial Date: August 13, 2024.  
) Action Filed: February 21, 2024

**TO THIS HONORABLE COURT, TO DEFENDANTS AND THEIR  
ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that Plaintiff Larry Jones (hereinafter "**Plaintiff**") hereby moves the Court, Ex Parte, for an Order, *nunc pro tunc*, granting Plaintiff leave to file documents out of time and deeming the following documents already filed to have been filed with leave of court: 1. Notice of errata containing Plaintiff's Statement of Genuine Disputes of Material fact in support of Plaintiff's Opposition to Defendants' Motion for Summary Judgment "**MSJ**" (see ECF Nos. 43); 2. Plaintiff's Declaration in support of his opposition to Defendants' MSJ (see ECF Nos. 43-2); 3. Plaintiff's Witness list (ECF No. 45); and 4. Plaintiff's Memorandum of Contentions of facts and law (see ECF Nos. 44.).

1 On 6/27/2024, Defendants filed their Motion for Summary Judgment. ECF No. 34.  
2 The motion was set for hearing on July 29, 2024. On July 8<sup>th</sup> 2024, Plaintiff, through  
3 Counsel, filed his opposition and due to nothing but sheer inadvertence, Plaintiff's  
4 Counsel did not file Plaintiff's Separate Statement of Genuine Disputes. The document  
5 was complete and ready to file and is cited all over Plaintiff's opposition papers. See  
6 Kisob Decl. ¶ 4.

7 Defendants filed their Reply on July 15, 2024. ECF No. 39. Plaintiff then filed a  
8 notice of Errata attaching Plaintiff's Separate Statement of Genuine Disputes and a  
9 Declaration of Larry Jones, correcting the numbering of Exhibits filed in support thereof.  
10 See ECF Nos. 43, 43-1, 43-2.

11 Plaintiff also filed a Memorandum of contentions of fact and law as well as Plaintiff's  
12 Witness list on July 18, 2024. Pursuant to local rule 16, these were supposed to be filed at  
13 least 21 days before the August 5<sup>th</sup>, 2024 Pretrial Conference.

14 Pursuant to Local Rule 7-19, Federal Rule of Civil Procedure 6(c)(1)(A),  
15 and this Court's standing orders, Plaintiff hereby applies to this Court Ex Parte (the  
16 "**Ex Parte Application**") for an order, *nunc pro tunc*, granting him leave to file: 1. a  
17 notice of Errata attaching Plaintiff's Separate Statement of Genuine Disputes and a  
18 Declaration of Larry Jones, correcting the numbering of Exhibits filed in support of the  
19 original Declaration (see ECF Nos. 43, 43-1, 43-2); 2. plaintiffs' Memorandum of  
20 Contentions of fact and law; and, 3. Plaintiff's Witness list. Plaintiff also seeks an order  
21 granting leave to file a joint Exhibit list no later than 3 business days from July 18, 2024.

22 Pursuant to Local Rule 7-19 and this Court's Standing Order, Plaintiff's  
23 Attorney sent an email to Defendants' counsel and provided notice of the instant Ex Parte  
24 Application on Thursday, July 18, 2024. (Kisob Decl. at ¶). Plaintiff's Attorney also  
25 called Defendants' Counsel to no avail. Plaintiff did not hear back from Defendants'  
26 Counsel at the time of filing this motion. See Kisob Decl. ¶ 3. Opposing counsel's  
27 contact information is as follows:

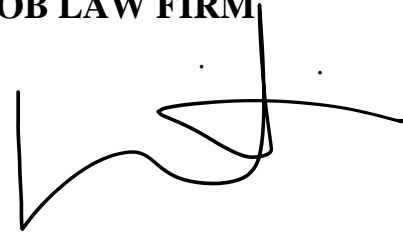
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This Ex Parte Application is based upon the accompanying Memorandum of Points and Authorities, the Declaration of Apemwoyah Kisob Alaric-Lorenzo and Exhibits attached thereto, all pleadings and documents on file herein, and such other matter, oral or documentary, as may be considered by the Court.

Dated: July 18<sup>th</sup> 2024

**KISOB LAW FIRM**



By: \_\_\_\_\_

Apemwoyah Kisob Alaric-Lorenzo

Attorney for PLAINTIFF

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

On 6/27/2024, Defendants filed their Motion for Summary Judgment. ECF No. 34. The motion was set for hearing on July 29, 2024. On July 8<sup>th</sup> 2024, Plaintiff, through Counsel, filed his opposition and due to nothing but sheer inadvertence, Plaintiff's Counsel did not file Plaintiff's Separate Statement of Genuine Disputes. The document was complete and ready to file and is cited all over Plaintiff's opposition papers.

Defendants filed their Reply on July 15, 2024 ECF No. 39. Plaintiff then filed a notice of Errata attaching Plaintiff's Separate Statement of Genuine Disputes and a Declaration of Larry Jones, correcting the numbering of Exhibits filed in support thereof. See ECF Nos. 43, 43-1, 43-2.

Plaintiff also filed a Memorandum of contentions of fact and law as well as Plaintiff's Witness list on July 18, 2024. Pursuant to local rule 16, these were supposed to be filed at least 21 days before the August 5<sup>th</sup>, 2024 Pretrial Conference.

### II. LEGAL STANDARD.

Procedure "is a means to an end, not an end in itself — the 'handmaid rather than the mistress' of justice." Charles E. Clark, *History, Systems and Functions of Pleading*, 11 Va. L. Rev. 517, 542 (1925). While district courts enjoy a wide latitude of discretion in case management, this discretion is circumscribed by the courts' overriding obligation to construe and administer the procedural rules so as "to secure the just, speedy, and inexpensive determination of every action and proceeding." Fed.R.Civ.P. 1. Federal Rule of Civil Procedure 6(b)(1) provides:

(1) In General. When an act may or must be done within a specified time, the court may, for good cause, extend the time:

(A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

1 This rule, like all the Federal Rules of Civil Procedure, "[is] to be liberally construed to  
2 effectuate the general purpose of seeing that cases are tried on the merits." *Rodgers v.*  
3 *Watt*, 722 F.2d 456, 459 (9th Cir. 1983) (quoting *Staren v. American Nat'l Bank Trust*  
4 *Co. of Chicago*, 529 F.2d 1257, 1263 (7th Cir. 1976)); see also Fed.R.Civ.P. 1 ("[The  
5 Federal Rules] should be construed and administered to secure the just, speedy, and  
6 inexpensive determination of every action and proceeding."). Consequently, requests for  
7 extensions of time made before the applicable deadline has passed should "normally . . .  
8 be granted in the absence of bad faith on the part of the party seeking relief or prejudice  
9 to the adverse party." 4B Charles Alan Wright Arthur R. Miller, *Federal Practice and*  
10 *Procedure* § 1165 (3d ed. 2004).

11 The court may authorize further briefings after a reply has been filed. L.R. 7-10.  
12 A district court may allow a sur-reply to be filed, but only "where a valid reason for such  
13 additional briefing exists..." *Hill v. England*, 2005 WL 3031136, \*1 (E.D.Cal. Nov. 8,  
14 2005).

### 15 **III. ARGUMENT**

#### 16 **A. THE ALREADY FILED DOCUMENTS ARE HIGHLY IMPORTANT.**

17 Plaintiff's already filed Errata sheet contains Plaintiff's Separate Statement  
18 of Genuine Disputes in opposition to Defendants' MSJ and a Declaration of Larry Jones,  
19 correcting the numbering of Exhibits filed in support thereof. See ECF Nos. 43, 43-1, 43-  
20 The Statement of Genuine disputes responds to Defendants Statement of Uncontroverted  
21 facts and also adds additional undisputed facts. It is critical that the court look at these  
22 documents when it rules on Defendants' MSJ. As to Plaintiff's declaration, only clerical  
23 errors were corrected.

#### 24 **B. DEFENDANTS WILL NOT BE PREJUDICED**

25 Plaintiff's separate statement will not prejudice Defendants in any way  
26 since all the evidence it cites was timely filed alongside Plaintiff's Opposition. The  
27 Declaration of Larry Jones only corrects clerical errors in order to make the declaration  
28 itself, match with the Exhibits filed with the original declaration.

**C. GOOD CAUSE EXISTS TO JUSTIFY GRANTING THE RELIEF  
SOUGHT ON AN *EX PARTE* BASIS.**

Plaintiff's Attorney filed the necessary Opposition to Defendants' MSJ and due to inadvertence, forgot to attach the Separate Statement of Genuine Disputes. Immediately thereafter, water spilled on his work laptop and the screen went dark, never to be revived. Plaintiff's Attorney's backup computers did not have the most recently filed documents since the daily backup had not occurred. Plaintiff's Counsel got caught up trying to retrieve backed up data from cloud sources and the broken laptop's hard drive and that explains the delay in filing the documents on time. Plaintiff's Attorney has since then purchased a new laptop and regained access to all data. Kisob Decl. ¶5.

**D. CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests an order, *nunc pro tunc*, granting him leave to file: 1. a notice of Errata attaching Plaintiff's Separate Statement of Genuine Disputes; 2. the Declaration of Larry Jones, correcting the numbering of Exhibits filed in support thereof (see ECF Nos. 43, 43-1, 43-2); 3. plaintiffs' Memorandum of Contentions of fact and law; and, 4. Plaintiff's Witness list. Plaintiff also seeks an order granting the parties leave to file a joint Exhibit list no later than 3 business days from July 18, 2024.

Dated: July 18<sup>th</sup> 2024

**KISOB LAW FIRM**

By: 

Apemwoyah Kisob Alaric-Lorenzo  
Attorney for Plaintiff